

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GAVIN CLARKSON,

Plaintiff,

No. 2:18-cv-00870-KRS-GBW

v.

BOARD OF REGENTS OF THE
NEW MEXICO STATE UNIVERSITY;
DAN HOWARD; JAMES HOFFMAN;
ENRICO PONTELLI; and NANCY
ORETSKIN,

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER comes before the Court *sua sponte*. On March 14, 2019, the Court granted in part the University's motion to dismiss. (Doc. 26). Finding Clarkson's proposed amended complaint deficient as part of adjudicating that motion, the Court allowed Clarkson leave to amend and directed him to file a new complaint that complied with the Federal Rules. (*Id.*). On March 29, 2019, Clarkson filed an amended pleading, naming individual defendants in addition to the University. (Doc. 27). To date, only University has answered the amended complaint. And after reviewing the record, the Court is unable to determine that Clarkson has served any of the individual defendants. In fact, it appears Clarkson has taken no action on this case for over ninety days.

Federal Rule of Civil Procedure 4(m) requires the Court upon motion or notice to the plaintiff to dismiss a complaint without prejudice against a defendant when that "defendant is not served within 90 days after the complaint is filed." Alternatively, the Court may order the plaintiff serve the defendant within a specified time. *Id.* In any event, the plaintiff may obtain

an extension if he shows “good cause” for his failure to serve within the 90 days period. *Id.* In encouraging efficient litigation, Federal Rule of Civil Procedure 41(b) allows the Court to *sua sponte* dismiss an action for failure to prosecute. *See Rogers v. Andrus Transp. Servs.*, 502 F.3d 1147, 1151 (10th Cir. 2007).

In this case, Clarkson should have served his amended complaint on the individual defendants on or before June 28, 2019. The record discloses no evidence related to service on this point. Similarly, there is no evidence of any action on Clarkson’s part during the past three months. Nonetheless, before taking any action, the Court will first allow the Clarkson to explain why the Court should not dismiss the matter.

IT IS, THEREFORE, ORDERED that Clarkson show cause in writing on or before **July 25, 2019** why this matter should not be dismissed against the individual defendants for failure to serve them as required by Rule 4(m) or the case dismissed for failure to prosecute.



KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent